

9-75.000 OBSCENITY, SEXUAL EXPLOITATION, SEXUAL ABUSE, AND RELATED OFFENSES

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Introduction

This chapter contains the Department's policy on the investigation and prosecution of offenses related to obscenity, sexual exploitation of children, obscene or harassing telephone calls, and sexual abuse. The Child Exploitation and Obscenity Section (CEOS) has supervisory responsibility for each of these offenses.

9-75.020 Obscenity, etc. -- Authorization and General Prosecution Policies -- Department Priorities

The Child Exploitation and Obscenity Section special attorneys are authorized to conduct grand jury investigations and prosecute violations that fall within this chapter in any federal district, with or without the consent of the United States Attorney, whenever necessary. However, it is the strategy and policy of the Department to cooperate with the United States Attorney and designated Assistant United States Attorneys in prosecuting child pornography and obscenity cases.

Consultation with the Section is required before any criminal prosecution may be instituted under 18 U.S.C. § 1461 *et seq.*; § 2251 *et seq.*; § 2421 *et seq.*; §§ 2241 *et seq.*; §§ 1961 *et seq.*; and 47 U.S.C. § 223.

A civil action under 19 U.S.C. § 1305 may be instituted without prior authorization. Consultation with CEOS is required in prosecutions that would result in multiple prosecutions of an obscenity violator in more than one federal district.

Title 18 U.S.C. §§ 1461-1465, §§ 2251-2252 and §§ 2421-2424 are predicate offenses for violation of the RICO statute, 18 U.S.C. §§ 1961 to 1968. *See* 18 U.S.C. § 1961(1). Questions concerning RICO authorization and the application of the RICO guidelines should be addressed to the Organized Crime and Racketeering Section (OCRS); however, questions concerning obscenity, child pornography and child Mann Act issues involved in RICO should be addressed to the CEOS. CEOS and OCRS will jointly authorize RICO prosecutions that include obscenity, child pornography or child Mann Act violations as predicate offenses. *See also* USAM 9-110.000 *et seq.* for additional Departmental policy regarding RICO prosecutions; and USAM 9-79.100 *at* for information regarding the Mann Act.

CEOS should be advised in writing prior to initiation of the forfeiture action as to the nature and value of any property or interest forfeited under 18 U.S.C. §§ 2253 or 2254 for violations of 18 U.S.C. §§ 2251 or 2252 or forfeited pursuant to 18 U.S.C. § 1467 for violations of 18 U.S.C. § 1461 *et seq.* or forfeited in connection with an obscenity or child pornography based RICO prosecution.

Because the Department must report annually to Congress with regard to prosecutions, convictions, and forfeitures under these statutes, it is imperative that United States Attorneys maintain close contact with CEOS during the investigative and prosecutive stages of these cases. Copies of indictments, their disposition, sentencing information, and plea agreements must be furnished to the CEOS. In addition, if an agency refers a case to an office or section that is part of a nationwide operation, consultation with CEOS is required.

Prosecution priority should be given to cases involving large-scale distributors who realize substantial income from multi-state operations and cases in which there is evidence of involvement by known organized crime figures. However, prosecution of cases involving relatively small distributors can have a deterrent effect and would dispel any notion that obscenity distributors are insulated from prosecution if their operations fail to exceed a predetermined size or if they fragment their business into small-scale operations. Therefore, prosecution of such distributors also may be appropriate on a case-by-case basis.

Priority should also be given to cases involving the use of minors engaging in sexually explicit conduct for the purpose of producing any visual or print medium depicting such conduct or cases involving the mailing of interstate or foreign shipment of material depicting minors engaging in sexually explicit conduct (18 U.S.C. §§ 2251 *et seq.*).

Investigation has shown that many individuals who import or consensually exchange child pornography for their own collections do so repeatedly and with full knowledge that it is illegal to do so. In addition, many of these individuals regularly engage in sexual child abuse. Many of these people are also involved in occupations that bring them into frequent contact with children.

For an overview of the statutes that can be used to prosecute persons who commit obscenity, etc. violations, see the below-listed sections of the Criminal Resource Manual

Distribution of Obscene Matter -- Statutes	Criminal Resource Manual at 1963
Immoral Articles -- Prohibition of Importation	Criminal Resource Manual at 1964
Sexually Oriented Advertisements	Criminal Resource Manual at 1965
Sexual Exploitation of Children	Criminal Resource Manual at 1966
Selling or Buying of Children (Section 2251A)	Criminal Resource Manual at 1967
Certain Activities Relating to Material Involving the Sexual Exploitation of Minors -- 18 U.S.C §§ 2252 and 2252A	Criminal Resource Manual at 1968

Certain activities relating to material involving the sexual exploitation of minors	Criminal Resource Manual at 1969
Criminal Forfeiture	Criminal Resource Manual at 1970
Civil Forfeiture	Criminal Resource Manual at 1971
Civil Remedy for Personal Injuries	Criminal Resource Manual at 1972
Definitions for 18 U.S.C. §§ 2251, 2251A, 2252A and 2252	Criminal Resource Manual at 1973
Record keeping requirements	Criminal Resource Manual at 1974
Failure to report child abuse	Criminal Resource Manual at 1975
Production of Sexually Explicit Depictions of a Minor for Importation into the United States	Criminal Resource Manual at 1976
Mandatory Restitution (18 U.S.C. § 2259)	Criminal Resource Manual at 1977

9-75.084 Child Pornography -- Prosecution Policy -- Prospective Policy Generally and in Multi-District Investigations

Because of the international and national network of child pornography and child molesters which traffic in sexually explicit material featuring children depicted engaged in sexual conduct, projects involving multiple districts and multiple targets have become more commonplace. Individuals who receive child pornography are often child molesters and frequently are producers or distributors themselves.

Because of the underground and secretive nature of child pornography and the inextricable link between the receiving distributors and producer, new innovative law enforcement techniques involving multiple district prosecution of multiple targets have become necessary and commonplace. Regional and national reverse sting projects, undercover writing techniques, pedophile informant stings, and use of child pornography distributors and seizure lists are essential to successfully combat child pornography.

However, because of the new and complex nature of such investigations and the need for coordination of multiple district prosecutions which utilize the same concept or technique, it is imperative that the Child Exploitation and Obscenity Section (CEOS) of the Criminal Division be consulted prior to initiating a case against a defendant who may be a target which is the subject of multiple district investigation of child pornography. It is also important that United States Attorneys be advised through CEOS of actions by Postal Inspection Service, U.S. Customs or FBI in regional or national projects involving multiple federal districts. CEOS will coordinate the various federal investigations to ensure effective cooperation and communication among districts and between United States Attorneys and the federal agencies in any such multiple district investigation. A law enforcement agency that is investigating multiple targets residing in multiple federal districts, such as in reverse stings, undercover, or test writing operations, must obtain approval from CEOS prior to referral to the appropriate United States Attorneys.

United States Attorneys must consult with CEOS at least 10 days prior to obtaining or filing any indictment or information. In such cases, the United States Attorney shall also consult with CEOS prior to entering into any plea agreement to ensure that it does not affect other districts or other cases.

Pre-trial diversion for child pornography offenses is not favored and consultation is required.

9-75.093 Telecommunications

Title 47 U.S.C. § 223 makes it a Federal offense for any person in interstate or foreign communication by means of a telecommunication device to knowingly make, create or solicit and initiate transmission of any communication which is obscene, lewd, or indecent. This section was amended by the Communications Decency

Act of 1996 (CDA). The indecency part of the Act was challenged, and on June 26, 1997, the United States Supreme Court held that the CDA's "indecent transmission" and "patently offensively display" provisions under Sections 223(a)(1)(B) and (a)(2) and 223(d) abridge the freedom of speech protected by the First Amendment. *Reno v. ACLU*, 117 S.Ct. 2329 (1997). On July 30, 1997, the United States District Court in Philadelphia signed a final order permanently enjoining the Attorney General, the Department of Justice, and all acting under the Attorney General's discretion and control, from enforcing, prosecuting, investigating, or reviewing any matter premised upon "indecent communications." The Department, however, is not enjoined from enforcing, prosecuting, investigating, or reviewing allegations of violations of the Section based on prohibited obscenity or child pornography. See the Criminal Resource Manual at 2465.

For additional information related to the section 223 amendments, see the below-listed sections of the Criminal Resource Manual

Telecommunications Offenses Described	Criminal Resource Manual at 1978
Special Considerations in Obscene or Harassing Telephone Calls	Criminal Resource Manual at 1979
Obscene or Harassing Telephone Calls -- Jury Trial	Criminal Resource Manual at 1980

9-75.100 Sexual Abuse -- 18 U.S.C. §§ 2241 et seq.

The primary federal statutes concerning sexual abuse are in Chapter 109A, 18 U.S.C. §§ 2241 to 2245.

For more information on the sexual abuse statutes, see the following sections of the Criminal Resource Manual

Sexual Abuse	Criminal Resource Manual at 1981
Aggravated Sexual Abuse	Criminal Resource Manual at 1982
Sexual Abuse	Criminal Resource Manual at 1983
Sexual Abuse of a Minor or a Ward	Criminal Resource Manual at 1984
Abusive Sexual Contact	Criminal Resource Manual at 1985
Sexual Abuse Resulting in Death	Criminal Resource Manual at 1986
Definitions for 18 U.S.C. §§ 2241-2245	Criminal Resource Manual at 1987
Repeat Offenders	Criminal Resource Manual at 1988
Mandatory Restitution for Sexual Abuse Offenders (18 U.S.C. § 2248)	Criminal Resource Manual at 1989
Sexual Assault	Criminal Resource Manual at 1990
Felony Murder	Criminal Resource Manual at 1991

9-75.200 Transportation for Illegal Sexual Activity and Related Crimes -- 18 U.S.C. §§ 2421 et seq.

Section 2421 of Title 18 prohibits anyone from knowingly transporting an individual in interstate or foreign commerce with the intent that the individual engage in prostitution or any criminal sexual activity and imposes a maximum punishment of five years' imprisonment and/or a fine under Title 18. For information on § 2422 (Coercion and Enticement), see the Criminal Resource Manual at 2001. For information on § 2423 (Transportation of Minors), see the Criminal Resource Manual at 2002. *See also* USAM 9-79.100.

9-75.300 Obscenity/Sexual Exploitation -- Venue

Cases under the obscenity statutes may be prosecuted in the district where the material is mailed or deposited with a facility of interstate commerce, the district of receipt, or any intermediate district through which the material passes. *See* 18 U.S.C. § 3237. In cases where there are complaints by postal patrons about the unsolicited receipt of obscene material, the district of receipt would appear to be the appropriate choice of venue. On the other hand, in cases involving numerous mailings by a distributor into various districts, the district of origin may be the appropriate venue for the case. Furthermore, if a case is to be based solely upon test purchases by postal inspectors, it may be venued in the district of receipt where the government has some information showing that there were prior mailings into the recipient districts by the individual involved. Prosecutions will not be brought in jurisdictions through which obscene material passes in transit except in unusual circumstances and only with the express concurrence of the Child Exploitation and Obscenity Section (CEOS). Consultation with CEOS is required if the case is part of a multi-district effort.

9-75.310 Multiple Prosecutions of Obscenity Offenses

Because of the nationwide scope of operations of the large-scale obscene material distributors, cases involving multiple violations of the obscenity laws are frequently referred by investigative agencies to one or more United States Attorneys contemporaneously. Although multiple prosecutions are generally not favored with respect to other crimes (*see* USAM 9-2.031), large-scale obscenity distributors will not be insulated and multiple prosecutions for violations of the obscenity statutes may be authorized. However, because of the need for coordination of multiple prosecutions, it is imperative that the Child Exploitation and Obscenity Section (CEOS) of the Criminal Division be consulted prior to initiating a case against a defendant who is a large-scale interstate producer or distributor and thus may be a target of multiple prosecutions. It is also important that United States Attorneys be advised of actions of the CEOS involving multiple district cases. Therefore, upon a determination by the CEOS that a target warrants a multiple district approach, the CEOS shall notify the United States Attorneys in those districts where investigations are contemplated.

CEOS will coordinate the various Federal investigations to ensure effective cooperation and communication among districts. A law enforcement agency that is targeting or investigating a major multiple district distributor must consult with the CEOS for approval prior to referral to the appropriate United States Attorney. In any case which is included in a multiple district prosecution project, i.e. where the same target or targets are to be subjects of prosecution in two or more districts, each United States Attorney in those districts must consult with CEOS and obtain approval prior to filing any indictment or information. It shall constitute sufficient prior approval if the proposed indictment or information is submitted to CEOS at least ten days before the date of indictment and no objection is made by CEOS by the date of indictment.

Whether or not more than one prosecution will take place will depend largely upon: (1) whether the transmission of material occurred prior or subsequent to the first indictment; (2) the number of districts involved; (3) the size of the operation; (4) the nature of the material transported or mailed; (5) the number of districts into which material was mailed or transported; and (6) charging considerations.

In short, multiple prosecutions will be encouraged where the producer or distributor is a large-scale, organized entity who routinely commits obscenity and related crimes in numerous Federal districts and where the size of the organizational structure suggests that a multiple district prosecution approach, in either districts of receipt and/or distribution, will be most effective.

9-75.320 Obscenity/Sexual Exploitation -- Federal-State Relations

The Federal role in prosecuting obscenity cases is to focus upon the major producers and interstate distributors of pornography while leaving to local jurisdictions the responsibility of dealing with local exhibitions and sales. Local authorities dealing with obscene material being distributed within their area may develop evidence of interstate distribution useful to a Federal prosecution. Under some circumstances, the United States may provide assistance to local and State authorities in cases not within the above guidelines. Hence, cooperation between Federal and local prosecutors can be highly productive in both Federal and local efforts. *See* Fed. R. Crim. P. 6(e).

9-75.400 Obscenity/Sexual Exploitation -- Forfeiture Procedures

Forfeiture actions initiated under the customs laws (19 U.S.C. § 1305) should receive the prompt and thorough consideration of those United States Attorneys having ports of entry within their jurisdictions since undue delay in commencing such action or in proceeding to trial may create First Amendment problems. *See United States v. Thirty-Seven (37) Photographs*, 402 U.S. 363 (1971), which requires that a complaint for forfeiture must be filed within 14 days following seizure and that trial must be completed within 60 days. *But see United States v. Hale*, 784 F.2d 1465 (9th Cir. 1986). While it is not necessary to secure Department authorization before filing a complaint in a matter referred by Customs Service for forfeiture action under 19 U.S.C. § 1305, the CEOS should be notified immediately after forfeiture.

9-75.410 Obscenity/Sexual Exploitation -- Request to Re-export

Importers of articles placed under seizure by Customs as obscene, and therefore subject to condemnation under 19 U.S.C. § 1305, may make a request to the Customs Service, or to the United States Attorney after referral of the matter to him/her for forfeiture action, to be permitted to re-export the articles. To permit re-exportation of an article once a complaint for forfeiture has been filed is inadvisable. The filing of the complaint should represent a final decision by the government that the article is obscene and will sustain forfeiture. To allow re-exportation without an adjudication would fail to carry out the statutory purpose of effecting the destruction of obscene material or to achieve the deterrent effect of forfeiture.

However, prior to filing of a complaint, greater latitude may be exercised with respect to the re-exportation of articles of questionable prosecutive merit. Re-exportation should be permitted only in those cases where the United States Attorney entertains grave doubts as to the possibility of a successful action under 19 U.S.C. § 1305. In the event that an importer approaches the United States Attorney with a request to re-export an article prior to the time such article has been formally referred to the United States Attorney by the Customs Service for his/her evaluation, the importer should be instructed to contact the Customs Service. If Customs officials thereafter informally request the United States Attorney's views concerning the merits of such a request, the United States Attorney should review the article in question and render his/her advice accordingly.

If after formal referral to the United States Attorney but before a complaint has been filed, an importer seeks permission from the United States Attorney to re-export an article and the United States Attorney is of the opinion that re-exportation would comport with the interests of the government, he/she should return the article to the Customs Service stating that a request for re-exportation has been made and that the United States Attorney has no objection to the re-exportation of the article in question.

The Child Exploitation and Obscenity Section (CEOS) will arbitrate any disputes between Customs and the United States Attorney on re-exportation. Because of strict judicial time limitations imposed upon the government in the prosecution of these cases, however, it is imperative that the United States Attorney immediately contact CEOS in the event of such a disagreement.

9-75.500 Sexual Assault/Child Molestation -- Federal Rules of Evidence

For a discussion of Federal Rules of Evidence 413-415 (effective July 10, 1995), see the Criminal Resource Manual at 2003.

9-75.520 Child Victims' and Child Witnesses' Rights

The Victims of Child Abuse Act of 1990 (VCAA) (18 U.S.C. § 3509) was enacted in response to the alarming increase of suspected child abuse cases made each year. In such cases, because the investigation and prosecution of child abuse is extremely complex, too often the system has not paid sufficient attention to the needs and welfare of the child victim, thus aggravating the trauma that the child victim had already experienced. Therefore, in order to address this, the VCAA provided, inter alia, authorization for training and technical assistance to judges, attorneys and others involved in State and Federal court child abuse cases; requires certain professionals to report suspected cases of child abuse under Federal jurisdiction; and amends the United States criminal code to ensure protection of children's rights in court and throughout the criminal justice system. The goal of every Federal law enforcement officer, investigator and prosecutor must be to make their best efforts or take whatever valid action necessary to reduce the trauma to the child victim caused by the criminal justice system while at the same time increasing the successful prosecution of child abuse offenders.

For additional information regarding victims, see USAM 3-7.300 et seq.